(2)

No. 90-108

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

S. EZRA AUSTERN and ESTHER AUSTERN,

Petitioners,

VS.

THE CHICAGO BOARD OPTIONS EXCHANGE, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION

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QUESTIONS PRESENTED

1. Whether the federal Circuit and District Courts which have addressed the issue of arbitral immunity were wrong in deciding that an organization sponsoring and providing a forum for arbitration is immune from liability for damages for alleged errors in the arbitration process?

2. Whether an unsuccessful party to an arbitration can recover, from the arbitration forum, attorneys fees and related expenses incurred in successfully resisting judicial confirmation of the arbitration award?

LIST OF PARTIES

The parties to the proceedings below were petitioner Esther Austern and petitioner S. Ezra Austern and respondent The Chicago Board Options Exchange, Inc. Respondent The Chicago Board Options Exchange, Inc. has no corporate parent, subsidiaries, or affiliates to list pursuant to Rule 28.1.

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No. 90-108

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1990

S. Ezra Austern and Esther Austern,

Petitioners,

vs.

The Chicago Board Options
Exchange, Inc.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent The Chicago Board Options Exchange, Inc. ("CBOE") respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Second Circuit's opinion in this case, reported at 898 F.2d 882 (2d Cir. 1990).

STATEMENT OF THE CASE

I.
PROCEEDINGS IN THE COURTS BELOW

Petitioners S. Ezra Austern and Esther Austern filed their complaint in this action seeking damages against CBOE for expenses incurred in defending an arbitration confirmation proceeding in the United States District Court for the District of Northern Illinois (the "Illinois District Court"). The Austerns claimed that the wrongful acts of respondent CBOE, the sponsor of the arbitration, precipitated their arbitration defeat and consequent involvement in the Illinois District Court confirmation proceeding, thus causing them monetary and emotional damage.

In lieu of answering the complaint, CBOE moved to dismiss all of

the Austerns' claims pursuant to Fed. R. Civ. P. 12(b)(6) and 56 based on the principle of arbitral immunity, and on the statutory remedial framework created by Congress in the Federal Arbitration Act, 9 U.S.C. § § 1-15 (the "FAA").

In an opinion and order dated July 31, 1989, reported at 716 F. Supp. 121 (S.D.N.Y. 1989), the District Court for the Southern District of New York dismissed the Austerns' complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. The District Court held that the doctrine of arbitral immunity shielded CBOE from the Austern's claims. Petition at A17-A23. Alternatively, the District Court held that the FAA provided the sole remedy to aggrieved parties to

arbitration -- quashing the arbitration award. Petition at A23-A25.

The Austerns then appealed the order of the District Court to the United States Court of Appeals for the Second Circuit. The Court of Appeals, in an opinion dated March 15, 1990, reported at 898 F.2d 882 (2d Cir. 1990), affirmed the judgment of the District Court. The Court of Appeals based its affirmance on the doctrine of arbitral immunity. In finding that CBOE, the sponsor of the arbitration, was shielded from the Austerns' damage claims, the Court of Appeals applied the functional comparability test established by this Court, followed other Circuit Court of Appeals decisions, and embraced the strong federal policy favoring the arbitration of disputes.

II.
ADDITIONAL FACTS AND HOLDINGS IN THE RECORD[1]

In February of 1984, a dispute arose between Fried Trading Company ("Fried") and the Austerns arising out of the parties' agreement relating to the Austerns' options trading account and the substantial deficit balance in the Austerns' account. Petition at A29. Because the Austerns refused to pay the deficit, Fried submitted the matter to binding arbitration before CBOE, pursuant to the arbitration clause in the parties' agreement. Id. When the Austerns attempted to avoid CBOE arbitration, Fried instituted a proceeding before a religious tribunal

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1 This discussion of additional facts is largely taken from petitioners' complaint and the May 19, 1989 decision of the Illinois District Court.

in Israel, The Bais Din, to compel the Austerns to arbitrate in Chicago before CBOE. Petition at A29. Under the auspices of the Bais Din, the parties came to an agreement under which the Austerns agreed to arbitrate before CBOE. Id. Pursuant to this agreement and based on the written contract between the parties, the dispute was returned to CBOE for arbitration by a petition filed by Fried on September 14, 1984. Petition at A30.

CBOE received the Austerns' answer to the arbitration claim on November 26, 1984. Id. Paragraph 3 of the answer stated that the Austerns "admit consent to appear in an arbitration proceeding instituted in Chicago by a limited partnership known as Fried Trading Company." Despite the arbitration provision contained in the

contract between Fried and the Austerns, the agreement reached in the Bais Din, and their answer to the petition, the Austerns attempted to avoid arbitration once again. By letter dated February 6, 1985, attorneys representing the Austerns challenged CBOE's jurisdiction by denying the Austerns' consent to arbitration and requesting that their appearance be withdrawn. - Id.

On or about August 16, 1985, CBOE rendered its decision and accepted the matter for arbitration after reviewing all of the parties' submissions. Id. CBOE ruled that both plaintiffs consented, either expressly or by conduct, to have the dispute arbitrated. Id. This ruling has now been confirmed by the Illinois District Court which held, in May of 1989, that

CBOE does have jurisdiction over the Fried-Austern dispute. Petition at A27-A36. The Austerns did not appeal this jurisdictional ruling and it thus is binding upon them.

After the hearing was scheduled and adjourned several times in 1985-86, CBOE sent a notice dated October 9, 1986 to the attorneys who had represented the Austerns in their challenge to the arbitrability of the claim. Petition at A14. The notice set forth a hearing date of October 22 and 23 (over two years after Fried had filed its petition for arbitration). The hearing was held in the absence of the Austerns, as the arbitration panel found that "all parties had a full opportunity to present arguments and evidence." Petition at A15. The panel ruled that Esther Austern was to pay

Fried $152,959.58 plus $4,000 in legal fees, and S. Ezra Austern was to pay Fried $4,000 in legal fees. Petition at A43.

By letter dated October 30, 1986, S. Ezra Austern wrote to CBOE requesting "that both the hearing and award be quashed, cancelled and declared null and void in all respects." In that letter, plaintiff raised the precise issues he raised in this action, i.e., lack of proper notice, scheduling of the hearing on a Jewish holiday, and lack of agreement to arbitrate.

By letter dated January 23, 1987, all parties were notified that, after meeting on December 22, 1986, and after considering "all pertinent matters of record" including the submissions discussed above, the

arbitration panel had denied the Austerns' request to quash, vacate or alter the award.

Fried subsequently commenced a proceeding in the Illinois District Court seeking to confirm the arbitration award. Petition at A44. The award was not confirmed by that court, which ruled that the Austerns did not receive sufficient notice prior to the hearing. Petition at A45-46. CBOE was not a party to that action. In later proceedings, the Illinois District Court, on May 19, 1989, ruled that CBOE has jurisdiction to arbitrate the dispute between Fried and the Austerns, and that the Austerns "agreed to have their disputes with [Fried] submitted to binding arbitration before CBOE." Petition at A35.

In their complaint, the Austerns assert that the alleged failure of CBOE to comply with its own procedural rules regarding proper notice and composition of the arbitration panel caused plaintiffs to suffer emotional distress to the extent of $500,000, and caused plaintiff S. Ezra Austern, an attorney, to expend considerable attorneys' time and expense, as well as local counsel fees and disbursements (totalling $108,500) defending himself and his wife in the confirmation action. As the Complaint (Petition at A47) states:

> 25. The defense of the said [confirmation] proceeding and each and every item of expense in connection therewith, as hereinabove set forth, were the direct and proximate result and consequence of the failure and neglect of CBOE to give respondents notice of the said arbitration hearing.

Plaintiffs' complaint consists of nine causes of action, all of which relate to alleged improprieties in CBOE's handling of the arbitration proceedings. As stated above, the gist of the Austerns' complaint is that the failure to give proper notice, as well as the improper selection of the arbitration panel, caused the expenditure of attorneys' fees and time.

SUMMARY OF ARGUMENT

Petitioners request this Court to review an opinion rendered by a unanimous panel of the Second Circuit Court of Appeals which is based on the application of well-settled principles of law and which is in harmony with every other federal court which has decided the same issues. Moreover, the questions presented by petitioners for review further demonstrate why certiorari should not be granted in this action.

1. Petitioners request the Court to review whether petitioners agreed to arbitrate their dispute. Petitioners are collaterally estopped from even raising this factual issue based on a 1989 decision of the U.S. District Court for

the Northern District of Illinois.

2. Petitioners request the Court to review whether CBOE had jurisdiction to arbitrate their dispute. Again, this is an issue which the Austerns are collaterally estopped from disputing. Moreover, petitioners admit that CBOE had subject matter jurisdiction over the underlying dispute, and thus that CBOE did not act in the total absence of any jurisdiction.

3. Petitioners request this Court to review whether arbitral immunity should extend to the sponsor of the arbitration proceedings. The Second

Circuit, in holding that immunity does encompass the sponsor of arbitration, reached the same result as the only two other U.S. Circuit Courts of Appeals which have considered this issue, and in so holding adhered to well-settled principles laid down by this Court.

4. Petitioners request this Court to review whether arbitral immunity should encompass acts committed during the arbitration process, as opposed to the rendering of the decision itself. Once again, the Second Circuit applied the test announced by this Court to determine whether a given act is

afforded immunity, and reached the same result as did the Sixth Circuit on this precise issue. Moreover, the Court of Appeals embraced the now well-established federal policy encouraging the use of arbitration as an alternate forum for the resolution of disputes.

5. Petitioners request this Court to review whether immunity should encompass due process violations. First, it is well-settled that immunity does encompass acts which allegedly amount to Constitutional violations. Second, petitioners cannot even assert a viable Constitutional claim in the

absence of any allegations of state action by CBOE.

For these reasons, which are amplified below, it is respectfully submitted that the opinion of the Second Circuit is not appropriate for further review by this honorable Court.

REASONS WHY THE PETITION SHOULD BE DENIED

I.
PETITIONERS' QUESTIONS RELATING TO ARBITRAL JURISDICTION DO NOT INVOLVE ISSUES OF FEDERAL LAW AND IN ANY EVENT HAVE BEEN FINALLY DECIDED AGAINST PETITIONERS.

Petitioners request this Court to review the related questions of 1) whether the arbitration sponsored by CBOE was contractually agreed upon and 2) whether the arbitration panel's "absence of jurisdiction" precluded the grant of immunity. The resolution of these issues does not require this

Court to decide questions of federal law. Rather, petitioners seek review of purely factual findings, which, in any event, they are precluded from challenging under the doctrine of collateral estoppel. In addition, the Austerns themselves admit that CBOE had jurisdiction to resolve the underlying dispute. Petition at page 14. Petitioners distort the law when they assert that an alleged improper composition of the arbitration panel entirely negates the "jurisdiction" of CBOE.

On May 19, 1989, the Illinois District Court ruled that CBOE had jurisdiction to arbitrate the dispute between Fried and the Austerns, and that the Austerns "agreed to have their disputes with [Fried] submitted to binding arbitration before CBOE."

Fried Trading Co. v. Austern, No. 86-C-8223 (N.D. Ill. May 19, 1989) (See Page A35 of the Petition). As parties to that litigation, the Austerns, who never appealed this ruling, are collaterally estopped from challenging the court's finding of an agreement to arbitrate.

The finding by the Illinois District Court also puts to rest the issue of whether or not the arbitration panel had "jurisdiction to arbitrate." The jurisdiction of an arbitration forum is derived solely from the agreement to arbitrate, and the Illinois District Court's finding that Fried's claims were within the parties' agreement, means that CBOE had jurisdiction to conduct arbitration proceedings resolving the underlying claim brought by Fried. In fact, Judge

Kocoras wrote: [T]his Court finds that CBOE has jurisdiction to arbitrate the parties' dispute." Fried Trading Co. v. Austern, No. 86-C-8223 (N.D. Ill. May 19, 1989) (See Page A27 of the Petition).

The Austerns do not dispute that they agreed to arbitrate before CBOE all disputes with Fried. Instead, they argue that since the composition of the panel itself allegedly violated CBOE rules, the panel had no "jurisdiction" and is not immune from suit. This view severely distorts the concept of jurisdiction as it relates to the grant of immunity. It is well-settled that immunity will not attach only when there is a clear absence of all subject matter jurisdiction over the dispute. See Stump v. Sparkman, 435 U.S. 349,

356-361 (1978) (judge subject to liability only "when he has acted in the clear absence of all jurisdiction"); Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351-52 (1872) (noting the distinction between acts taken in the clear absence of all jurisdiction over the subject matter (which are not protected) and acts taken in excess of jurisdiction (which are protected)). Here, the Austerns admit, and the Illinois District Court found, that CBOE had "subject matter" jurisdiction over the underlying dispute with Fried. At most, the Austerns allege only that CBOE erred in carrying out its jurisdiction, acts for which CBOE is entitled to immunity. See Stump, 435 U.S. at 1106 ("A judge is absolutely immune from liability for his judicial acts even if his exercise

of authority is flawed by the commission of grave procedural errors.").

II.
THE DUE PROCESS ISSUES RAISED BY PETITIONER'S ARE WITHOUT MERIT AND ARE IRRELEVANT TO THE DISPOSITION OF THIS ACTION

Simply put, this Court should not review petitioners' due process issue (Question Presented #5) because 1) the Austerns never alleged the requisite state action by CBOE necessary to claim a Constitutional violation -- and, in fact, cannot make such an allegation -- and 2) the doctrines of judicial and arbitral immunity clearly extend to alleged Constitutional violations.

The Court of Appeals held that CBOE is shielded from civil liability under the doctrine of arbitral

immunity. Implicit in that finding was that the immunity afforded arbitrators would encompass liability based on alleged Constitutional violations. In fact, it is well settled that quasi-judicial immunity extends to such claims. See Butz v. Economou, 438 U.S. 478, 502-504 & n.30 (1978); Stump v. Sparkman, 435 U.S. 349, 356 (1978); Pierson v. Ray, 386 U.S. 547 (1967). Thus, the issue of whether or not the existence of a due process claim affects the immunity granted to CBOE has already been resolved by this Court.

Moreover, as the District Court below found, the Austerns' Constitutional claims are defective because the Austerns failed to allege governmental action. 716 F.Supp. at 125 (pages A25-A26). Nor can they so allege because CBOE is a private

institution and is not, nor has ever been held to be, a governmental instrumentality. Moreover, the evidence on this point before the District Court on CBOE's Rule 12(b) and 56 motion was uncontradicted.

Under uniform federal Circuit Court authority, the Austerns thus have no viable Constitutional claim because a Constitutional violation cannot be asserted against a private arbitration forum lacking the required governmental nexus. FDIC v. Air Florida Sys., Inc., 822 F.2d 833, 842 & n.9 (9th Cir. 1987) ("we do not find in private arbitration proceedings the state action requisite for a Constitutional due process claim") (emphasis added), cert. denied, 485 U.S. 987 (1988); Elmore v. Chicago & I.M.R. Co., 782 F.2d 94, 96 (7th Cir. 1986) ("since constitutional rights are

in general rights against governmental officials and agencies . . . the fact that a private arbitrator denies the procedural safeguards that are encompassed by the term 'due process of law' cannot give rise to a constitutional complaint") (emphasis added); see Taylor v. Consolidated Edison, 552 F.2d 39, 46 (2d Cir. 1977) (denial of hearing by electric company who turned off service not a denial of due process due to lack of state action), cert. denied, 434 U.S. 845 (1977).[2]

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2 For the same reasons, the Austerns cannot assert a claim based on a violation of the Illinois Constitution. See USA I Lehndorff Vermoegensverwaltung Gmbh & Cie v. Cousins Club, Inc., 64 Ill. 2d 11, 20-21, 348 N.E.2d 831, 831-35 (1976).

III.
THE HOLDING BELOW FOLLOWS WELL-SETTLED PRINCIPLES OF LAW WHERE THE DECISIONS OF THE CIRCUIT COURTS ARE WITHOUT CONFLICT

Petitioners in Questions Presented Numbers Three and Four request this Court to review the related questions of 1) whether arbitral immunity should apply to the commercial organization sponsoring arbitration and 2) whether such immunity extends to cover acts relating to the administration of the arbitration process. The Court should decline to review these questions because the Second Circuit, in finding CBOE immune for the acts complained of by the Austerns, applied well-settled principles of law and reached the same result reached by all other federal courts deciding these questions.

The concept of absolute immunity has long shielded judges from damages liability for actions taken in the exercise of their judicial functions. See Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1872); see also Stump v. Sparkman, 435 U.S. 349, 355-57 (1978); Pierson v. Ray, 386 U.S. 547, 553-55 (1967); Heimbach v. Village of Lyons, 597 F.2d 344, 347 (2d Cir. 1979). This comparatively sweeping form of immunity has also been extended to executive branch officials who perform either quasi-judicial functions, see Butz v. Economou, 438 U.S. 478, 513-14 (1978) (administrative law judge and various agency officials), or prosecutorial functions "intimately associated with the judicial phase of the criminal process," Imbler v. Pachtman, 424 U.S.

409, 430 (1976); accord Rudow v. City of New York, 822 F.2d 324, 327-30 (2d Cir. 1987).

As with judicial immunity, which "protect[s] the finality of judgments [by] discouraging inappropriate collateral attacks . . . [and] also protect[s] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants," Forrester v. White, 484 U.S. 219, 225 (1988) (citing Bradley, 80 U.S. (13 Wall.) at 348), the scope of quasi-judicial immunity is defined not by the identity of the actor but by the nature of the function performed, namely freeing the adjudicative process and those involved therein from harassment or intimidiation. See Butz, 439 U.S. at 512.

Based primarily on the "functional comparability" of the arbitrator's role in a contractually agreed upon arbitration proceeding to that of his judicial counterpart, the Courts of Appeals that have addressed the issue have uniformly immunized arbitrators from civil liability for all acts peformed in their arbitral capacity. See Wasyl, Inc. v. First Boston Corp., 813 F.2d 1579, 1582 (9th Cir. 1987); Ozark Air Lines, Inc. v. National Mediation Board, 797 F.2d 557, 564 (8th Cir. 1986); Austin Municipal Secs., Inc. v. National Ass'n of Secs. Dealers, Inc., 757 F.2d 676, 686-91 (5th Cir. 1985); Corey v. New York Stock Exch., 691 F.2d 1205, 1208-11 (6th Cir. 1982); Tamari v. Conrad, 552 F.2d 778, 780 (7th Cir. 1977); Cahn v. International Ladies' Garment Union,

311 F.2d 113, 114-15 (3d Cir. 1962) (per curiam); accord Calzarano v. Liebowitz, 550 F.Supp. 1389, 1390-91 (S.D.N.Y. 1982).

Based on these well-establish principles, the Court of Appeals below held that CBOE, as the commercial organization sponsoring arbitration, is immune for all acts integrally related to the arbitration process. The Sixth Circuit in Corey v. New York Stock Exch., 691 F.2d 1205 (6th Cir. 1982), and the Eight Circuit in Ozark Air Lines, Inc. v. National Mediation Bd., 797 F.2d 557 (8th Cir. 1986), have also granted immunity to the organization sponsoring and choosing arbitrators. See also Rubinstein v. Otterbourg, 78 Misc. 2d 376, 357 N.Y.S.2d 62 (N.Y.C. Civ. Ct. 1973) (granting immunity to the American Arbitration Association).

These courts, as well as the Court of Appeals below, have recognized that:

> [e]xtension of arbitral immunity to encompass boards [that] sponsor arbitration is a natural and necessary product of the policies underlying arbitral immunity; otherwise the immunity extended to arbitrators is illus[ory]. It would be of little value to the whole arbitral procedure to merely shift the liability to the sponsoring association.

Corey, 691 F.2d at 1211; Ozark Air Lines, 797 F.2d at 564; Austern v. CBOE, 898 F.2d at 886.

The Second Circuit also held that choosing a panel and providing notice of arbitration were integrally related to the arbitration process and thus entitled to immunity. The Sixth Circuit reached the exact same result in Corey.

The Court of Appeals' decision below, as well as in Corey, were

mandated by applying principles set forth by this Court. In Forrester v. White, 484 U.S. 219, 227 (1988), for example, the Court noted that absolute immunity is "justified and defined by the functions it protects and serves, not by whom it attaches." (emphasis added). In applying this "functional comparability" test, this Court has extended absolute immunity to executive branch officials who perform either quasi-judicial functions, see Butz v. Economou, 438 U.S. 478, 513-14 (1978), or prosecutorial functions. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976). The Second Circuit in granting immunity to CBOE simply applied the functional comparability test mandated by this Court and applied in a like manner by other Circuits.

In fact, federal courts have found that the sending of notice is sufficiently related to the judicial process to hold clerks immune from claims for damages relating to such acts. See Sullivan v. Kelleher, 405 F.2d 486, 487 (1st Cir. 1968); Morrison v. Jones, 607 F.2d 1269, 1273 (9th Cir. 1979), cert. denied, 445 U.S. 962 (1980). Others have held purely ministerial acts to be immune so long as they relate to the quasi-judicial process. See Ashbrook v. Hoffman, 617 F.2d 474, 476-477 (7th Cir. 1980) (all acts committed by partition commissioners relating to partition proceeding are activities for which the commissioners are absolutely immune); Kermit Constr. Corp. v. Banco Credito y Ahorro Ponceno, 547 F.2d 1 (1st Cir. 1976) (receivers absolutely immune even

though engaged in ministerial acts); Davis v. McAteer, 431 F.2d 81, 82 (8th Cir. 1970) (court clerk absolutely immune for losing court files); Stewart v. Minnick, 409 F.2d 826 (9th Cir. 1969) (court reporter and clerk absolutely immune for refusing to furnish appellant with trial transcripts). The Austerns have repeatedly missed the mark in claiming that CBOE's acts here were "ministerial" (i.e., not discretionary) and thus not entitled to immunity, when the proper test is the relation of the act to the quasi-judicial process, i.e., the function being served by the act.

In addition, the Second Circuit below followed the strong federal policy found in the Federal Arbitration Act of encouraging

arbitration as an alternate forum for the resolution of disputes. See Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987); Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 400 U.S. 1, 24 (1983); 9 U.S.C. §§ 2, 3, 4. The grant of immunity promotes and encourages both fora and arbitrators to conduct arbitration proceedings.

The only decision which appears to run counter to the uniform decisions below and those of other federal courts is a California intermediate appellate decision, Baar v. Tigerman, 140 Cal. App. 3d 979, 189 Cal. Rptr. 834 (1983). In Barr, the court refused to extend immunity to an arbitration forum because it held that the arbitrator himself was not immune for damages arising from the failure to

render a timely award. Apparently, no other jurisdiction or court has followed Baar's position relating to the limited scope of arbitral immunity. In fact, the California Legislature disagreed so strongly with Baar's reasoning, that it passed legislation specifically designed to circumvent its authority. As stated by the court in Coopers & Lybrand v. Superior Court, 212 Cal. App. 3d 524, 260 Cal. Rpti. 713 (1989):

> Senate Bill No. 1001 (1985-1986 Reg. Sess.) was introduced in direct response to Baar. The purpose of the legislation was to supersede our holding in Baar and to expand arbitral immunity to conform to judicial immunity when the arbitrator is acting under any statute or contract. The bill reflected the legislative policy determination that in view of overwhelming court congestion, complete immunity was essential to encourage persons to serve as arbitrators. The

> law has thus come a long way from disfavoring arbitration so as not to encroach on the jurisdiction of the courts to the present policy of actively encouraging alternative dispute resolution in order to relieve the burden on the judicial system.

212 Cal. App. 3d at 535. Thus, the only authority which arguably conflicts with the decision which petitioners seek review, has been criticized and superceded by subsequent legislation and in any event did not involve federal law.

Finally, the Second Circuit's decision below in no way conflicts with this Court's opinion in Forrester v. White, 484 U.S. 219 (1980). In Forrester, the Court held that a judge is not immune from damages relating to the firing of one of his employees. Clearly, the relationship between the act of firing an employee and the

judicial process is too remote to warrant protection. Here, CBOE was functioning not as an employer, but rather directly in its capacity as the sponsor and in furtherance of the quasi-judicial arbitration process.

CONCLUSION

By reason of the foregoing, the petition for a writ of certiorari should be denied.

Dated: New York, New York
August 14, 1990

Respectfully submitted,

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